

The imposition of the local Retailers' Occupation Taxes in Illinois are triggered when "selling" occurs in a jurisdiction imposing a tax. 86 Ill. Adm. Code 270.115. (This is a PLR.)

February 26, 2001

Dear Xxxxx:

This Private Letter Ruling, issued pursuant to 2 Ill. Adm. Code 1200 (see <http://www.revenue.state.il.us/legalinformation/regs/part1200>), is in response to your letter of January 26, 2001. Review of your request for a Private Letter Ruling disclosed that all information described in paragraphs 1 through 8 of subsection (b) of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to COMPANY for the issue or issues presented in this ruling. Issuance of this ruling is conditioned upon the understanding that neither COMPANY nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request.

In your letter, you have stated and made inquiry as follows:

On behalf of our client, COMPANY, we respectfully request a private letter ruling that COMPANY's sales of computer hardware and related equipment to its customers in Illinois are subject to the home rule municipal retailers' occupation tax imposed by the CITY. Enclosed please find an original Form IL-2848 Power of Attorney, authorizing FIRM to represent COMPANY before the Illinois Department of Revenue ('Department'). Our private letter ruling request is pursuant to 2 Ill. Adm. Code 1200.110 with respect to the following factual situation.

General Information

This request for a private letter ruling is not made with regard to hypothetical situations or alternative plans of proposed transactions. COMPANY is not under audit and is not engaged in litigation with the Department with regard to this or any other tax matter. The tax period at issue is the period beginning April 1, 2000.

To the best of our knowledge, and to the best of COMPANY's knowledge, the Department has never ruled on the issue discussed in this request (or on any similar issue) for COMPANY or its predecessors. COMPANY and its representatives have not submitted this or any similar issue for a ruling by the Department. COMPANY is unaware of any authority contrary to the views expressed in this request.

Statement of Material Facts

COMPANY is a retailer of computer hardware and related technology equipment. As part of its business, COMPANY offers customers professional consulting, product procurement, technology management, trade-in, leasing and rental and related financial services. The company maintains its headquarters in the CITY2, Illinois and has a regional office in STATE. In addition, COMPANY has two sales offices in Illinois, one in the CITY3 and the other in the CITY.

The company's present purchase order acceptance and rejection process is as follows: A customer who wants to buy a computer from COMPANY submits a purchase order to a sales representative or a customer service representative at the company's sales office in CITY3 or at the headquarters in CITY2. A COMPANY customer might submit a purchase order by telephone, facsimile, [or electronic mail. The purchase order is then input into COMPANY's sales order system using the company's 'enterprise software' program.

Next, the order is sent electronically to the mainframe computer at COMPANY's headquarters in CITY2, where the enterprise software performs price and credit tests. The price test confirms that the price on the customer's purchase order matches the company's current pricing for equipment the customer wants to buy. If the prices do not match, the software alerts a customer service representative, who contacts the customer to resolve the price discrepancy; if the prices do match, the software then tests to see if the customer has credit available for the order. The enterprise software batches all of the purchase orders passing these two tests and then sends the pending orders electronically to another computer in COMPANY's sales office in CITY. The CITY office is staffed by personnel from the company's accounting and credit department. The computer at the CITY sales office verifies the results of the price and credit tests performed on the mainframe computer at the company's headquarters, and then performs an additional 'prohibitive customer' test.

This 'prohibitive customer' test looks for customers who may have undergone a bankruptcy or who otherwise might pose credit risks that may not be disclosed by standard credit reporting services. If a pending order fails this test, the order is rejected and the computer alerts a credit manager, who will then notify the customer placing the order regarding the rejection. Alternatively, if a pending order passes this final test, COMPANY accepts the order and it is sent electronically to the customer service department for fulfillment.

Pending orders go through this final, pre-acceptance test by the computer in COMPANY's sales office in CITY for two reasons. First, it is cost prohibitive for the enterprise software installed on the mainframe at COMPANY's CITY2 headquarters (where the orders are input) to be modified to perform this function. And second, this final pre-acceptance step is the most cost-efficient method for giving COMPANY an optimal degree of internal control over the order acceptance process and minimizing its exposure to credit risks.

Issue

We request a private letter ruling that, under the circumstances described herein, COMPANY's sales to customers in Illinois are subject to the local sales tax in the CITY.

Relevant Authorities

A home rule municipality, like the CITY, may impose a retailers' occupation tax on companies engaged in selling at retail within the municipality. 65 ILCS 5/8-11-1; see Ill. Admin. Code tit. 86, §§ 270.101(a), 270.115(a)(1).

The Department's regulations provide that 'the seller's acceptance of the purchase order or other contracting action in the making of the sales contract is the most important single factor in the occupation of selling' 86 Ill. Admin. Code 270.115(b)(1). Furthermore, the regulation states that if a purchase order that accepts a seller's *complete and unconditional* offer to sell is received by the seller's place of business within the home rule municipality, the seller incurs Home Rule Municipality Retailers' Occupation Tax liability in that municipality. *Id.*

Therefore, under the Department's regulation, the situs of the sale for municipal retailer's occupation tax hinges on where the offer to sell becomes 'complete and unconditional.' The Department has issued a number of Private Letter Rulings ('PLR') illustrating where a sale is situated. In PLR 87-0340 (May 14, 1987), the Department stated that the determination of where a sale is made is a question of 'fact as to where the purchase order is subject to acceptance. The business procedures or procedures surrounding the making of a binding agreement to sell on the part of a given dealership is going to control the question of which municipality is entitled to the tax.' *Id.*

The facts in PLR 87-0340 deal with an auto dealership headquartered and licensed in 'City A' that conducted two large used car sales in 'City B.' (Although not labeled in the PLR, for reasons of clarity we are referring to the two locations as 'City A' and 'City B'). Although more details about how the transactions took place were not provided, the Department did state, '[i]f a car dealer receives a purchase order in [City B], but then transmits the purchase order to the dealership location in another municipality where they may run a credit check on the potential buyer for financing purposes or other purposes, this would indicate that the purchase order is not subject to final acceptance at [City B], but rather is subject to final acceptance at the dealership location.' *Id.* The Department indicates that if a credit check is the final step in approving a sale 'completely and unconditionally,' then the sale is situated for Municipal Retailers' Occupation Tax purposes where this credit check is performed.

Furthermore, the Department has indicated that even if the majority of the negotiations for a sale take place in another jurisdiction, where the sale becomes 'complete and unconditional' is still controlling. In PLR 87-0262 (April 15, 1987), a company (buyer) sought a ruling from the Department that the purchases for its new facility will be situated in CITY4, Illinois. The company stated that although the seller accepted the contract in its County office, all other aspects surrounding the negotiations took place in CITY4. The company stated the following activities took place in CITY4: solicitation by the sellers, bidding by various sellers, meetings, negotiations, receipt of orders, acceptance of orders, passing of title, delivery, installation and payment.

Nevertheless, the Department concluded in a strongly worded PLR that County is the situs for sales and use tax purposes since the sale was accepted there. 'A ceremony in CITY4 will not transform a CITY5 retailer into a CITY4 retailer. See 86 Ill. Admin. Code 270.115(c)(1) and (c)(2). If a purchase order which is an acceptance of the seller's complete and unconditional offer to sell is received at his CITY5 business location or is

accepted by someone working out of the CITY5 business, the retailer incurs Municipal Retailers' Occupation Tax liability in CITY5.'

The Department's analysis in PLR 87-0340 and PLR 87-0262 illustrate how COMPANY's transaction process should be treated. COMPANY receives purchase orders at one location, where the orders are input into the company's computer system, and transmits the pending orders to two locations for credit verification. Since the final test is performed in the CITY, the a sale will not become 'complete and unconditional' until the approval process is completed there. As a result, COMPANY's sales should be situated in the CITY for municipal retailer's occupation tax purposes.

COMPANY knows of no authority contrary to the above-cited authorities.

Conclusion

Based on the Department's regulations, PLR 87-0340 and PLR 87-0262, and on the facts as we have described them, we have concluded that COMPANY' s sales to customers in Illinois are subject to the municipal retailer's occupation tax imposed by the CITY. Again, we respectfully request a private letter ruling confirming our conclusion. If you have any reservation about issuing this letter ruling, please call the undersigned to discuss them or so COMPANY can withdraw this request.

As you know, the imposition of the various sales tax related local taxes in Illinois are triggered when "selling" occurs in a jurisdiction imposing a tax. 86 Ill. Adm. Code 270.115. The Department's opinion is that the most important element of selling is the seller's acceptance of the purchase order or other contracting action in the making of the sales contract. Consequently, if a purchase order is accepted in a jurisdiction that imposes a local tax, that tax will be incurred.

Based upon the facts set forth in your letter, the CITY is the jurisdiction whose local tax rate applies to sales by COMPANY.

The facts upon which this ruling are based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the material facts as recited in this ruling are correct and complete. This ruling will cease to bind the Department if there is a pertinent change in statutory law, case law, rules or in the material facts recited in this ruling.

I hope this information is helpful. If you have further questions concerning this Private Letter Ruling, you may contact me at (217) 782-2844. If you have further questions related to the Illinois sales tax laws, please visit our website at www.revenue.state.il.us or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Melanie A. Jarvis
Associate Counsel

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